

1 Phyllis Kupferstein, Esq. [SBN 108595]  
2 pk@kupfersteinmanuel.com  
3 Cynthia L. Zedalis, Esq. [SBN 118447]  
4 cz@kupfersteinmanuel.com  
5 Kupferstein Manuel LLP  
6 865 South Figueroa Street  
7 Suite 3338  
8 Los Angeles, California 90017  
9 Telephone: (213) 988-7531  
10 Facsimile: (213) 988-7532

11 Attorneys for Defendant  
12 Harvey Weinstein

13 **UNITED STATES DISTRICT COURT**  
14 **CENTRAL DISTRICT OF CALIFORNIA**

15 DOMINIQUE HUETT, an  
16 individual,

17 Plaintiff,

18 v.

19 THE WEINSTEIN COMPANY  
20 LLC, BOB WEINSTEIN and  
21 HARVEY WEINSTEIN,

22 Defendants.

CASE NO.: 2:18-cv-6012 SVW (MRW)

**DEFENDANT HARVEY  
WEINSTEIN'S MEMORANDUM OF  
LAW IN SUPPORT OF MOTION TO  
STAY;**

**SUPPORTING DECLARATIONS**

Hearing Date: January 28, 2019  
Time: 1:30 p.m.  
Courtroom: 10A

## TABLE OF CONTENTS

Preliminary Statement.....	1
Statement of Facts.....	2
Argument.....	3
I.    A Stay is Warranted in Light of the Pending Criminal Actions Against Weinstein.....	3
II.   The Fact That Weinstein is Under Indictment is the Most Significant Factor Weighing in Favor of a Stay.....	5
III.  The Fact That There is Substantial Overlap Between the Civil and Criminal Cases Also Warrants a Stay.....	7
IV.   Prejudice to Weinstein Outweighs Any Prejudice to Plaintiff.....	10
V.    The Interests of the Public and the Court are Best Served By A Stay.....	10
Conclusion.....	11

## TABLE OF AUTHORITIES

### Cases

<i>American Express Bus. Fin. Corp. v. RW Prof'l Leasing Servs. Corp.</i> , 225 F. Supp. 2d 263 (E.D.N.Y. 2002) .....	6, 10
<i>Baxter v. Palmigiano</i> , 425 U.S. 308 (1976) .....	3
<i>Continental Ins. Co. v. Cota</i> , 2008 WL 4298372 (N.D. Cal. Sept. 19, 2008) .....	6, 7
<i>Corbin v. Federal Deposit Ins. Corp.</i> , 74 F.R.D. 147 (E.D.N.Y. 1977) .....	10
<i>Crawford &amp; Sons v. Besser</i> , 298 F. Supp. 2d 317 (E.D.N.Y. 2004) .....	7, 10
<i>ESP Capital Partners LP v. Stratos</i> , 22 F. Supp. 3d 1042 (N.D. Cal. 2014) .....	6
<i>Federal Sav. &amp; Loan Ins. Corp. v. Molinaro</i> , 889 F.2d 899 (9th Cir.1989).....	4, 6
<i>Green v. Cosby</i> , 177 F. Supp. 3d 673 (D. Mass. 2016) .....	9, 11
<i>Hicks v. City of New York</i> , 268 F. Supp. 2d 238 (E.D.N.Y. 2003) .....	6
<i>In re Adelpia Communs. Secs. Litig.</i> , 2003 U.S. Dist. LEXIS 9736 (E.D. Pa. May 14, 2003) .....	5, 10
<i>In re Ivan F. Boesky Sec. Litig.</i> , 128 F.R.D. 47 (S.D.N.Y. 1989) .....	11
<i>Javier H. v. Garcia-Botello</i> , 218 F.R.D. 72 (W.D.N.Y. 2003).....	5, 10
<i>Jones v. Conte</i> , 2005 WL 1287017 (N.D. Cal. Apr. 19 2015) .....	5, 7
<i>Judy Huth v. William Henry Cosby, Jr.</i> , BC565560 (Cal. Sup. Ct. Mar. 30, 2016) .....	8
<i>Keating v. Office of Thrift Supervision</i> , 45 F.3d 322 (9 <sup>th</sup> Cir. 1995).....	4, 5
<i>Louis Vuitton Malletier S.A. v. LY USA, Inc.</i> , 676 F.3d 83 (2d Cir. 2012).....	4, 6, 7, 9
<i>Maldonado v. City of New York</i> , No. 17-cv-6618 (AJN), 2018 U.S. Dist. LEXIS 93417 (S.D.N.Y. June 1, 2018) .....	6
<i>Maloney v. Gordon</i> , 328 F. Supp. 2d 508 (D. Del. 2004).....	5, 10, 11
<i>McCormick v. Rexroth</i> , 2010 WL 934242 (N.D. Cal. Mar. 15, 2010).....	7
<i>SEC v. Blaszcak</i> , 17-civ-3919, 2018 U.S. Dist. LEXIS 2289 (S.D.N.Y. Jan. 3, 2018).....	5

1	<i>SEC v. Dresser Indus., Inc.</i> ,	
2	628 F.2d 1368 (D.C. Cir.), <i>cert. denied</i> , 449 U.S. 993 (1980) .....	4, 6
3	<i>SEC v. Telexfree, Inc.</i> ,	
4	52 F. Supp. 3d 349 (D. Mass. 2014) .....	11
5	<i>Trs. of the Plumbers &amp; Pipefitters Nat'l Pension Fund v. Transworld Mech.</i> ,	
6	886 F. Supp. 1134, (S.D.N.Y. 1995).....	5, 6 ,7, 9
7	<i>United States v. 4003-4005 5th Ave.</i> ,	
8	55 F.3d 78 (2d Cir. 1995).....	4
9	<i>United States v. Kordel</i> ,	
10	397 U.S. 1 (1970) .....	4
11	<i>United Techs. Corp. v. Dean</i> ,	
12	906 F. Supp. 27 (D. Mass. 1995) .....	10
13	<i>Volmar Distribs. v. N.Y. Post Co.</i> ,	
14	152 F.R.D. 36 (S.D.N.Y. 1993) .....	10
15	<i>Walsh Securities, Inc. v. Cristo Prop. Mgmt, Ltd.</i> ,	
16	7 F. Supp. 2d 523 (D.N.J. 1998) .....	5

## Statutes

17	18 U.S.C. § 1591.....	2
18	<i>Fed. R. Evid.</i> 404(b).....	7

## Other Authorities

19	New York Penal Law §130.50(1).....	2
20	New York Penal Law §130.15(2).....	2
21	New York Penal Law §130.25(1).....	2
22	New York Penal Law §130.35(1).....	2

1 Defendant Harvey Weinstein, by his attorneys Kupferstein Manuel LLP,  
 2 respectfully submits this memorandum of law in support of his motion to stay this  
 3 proceeding pending resolution of the related criminal case in which he was  
 4 indicted on felony charges on May 30, 2018. For the reasons set forth below and  
 5 in the attached Declarations of Benjamin Brafman, Esq. (“Brafman Dec.”) and  
 6 Cynthia L. Zedalis, Esq. (“Zedalis Dec.”), Weinstein’s motion should be granted in  
 7 all respects.

### 8 **Preliminary Statement**

9 Weinstein should not be forced to decide between being prejudiced in this  
 10 civil litigation, if he asserts his Fifth Amendment privilege, or being prejudiced in  
 11 criminal litigation, if he waives that privilege in this case. Accordingly, this action  
 12 should be stayed as Weinstein is presently under criminal indictment for sexual  
 13 assault and sexual misconduct, and is the subject and/or target of other ongoing  
 14 criminal investigations arising from alleged conduct similar to that underlying this  
 15 action. Plaintiff Dominique Huett (“Plaintiff”) alleges she was sexually assaulted  
 16 by Weinstein in a Beverly Hills hotel room in 2010. Plaintiff’s allegations of  
 17 sexual misconduct parallel the allegations of sexual misconduct in the New York  
 18 County District Attorney’s Office (“NYDA”) criminal case against Mr. Weinstein,  
 19 as well as the allegations under investigation by the United States Attorney’s  
 20 Office for the Southern District of New York and the Los Angeles County District  
 21 Attorney’s Office.

22 It is well-settled that a civil action should be stayed pending a related  
 23 criminal action involving similar conduct where the defendant risks incrimination.  
 24 Here, given the overlap between the criminal and civil matters, a stay is warranted  
 25 as Weinstein is unable to respond to the factual allegations of Plaintiff’s First  
 26 Amended Complaint, respond to or participate in the discovery process, or  
 27 otherwise litigate this matter, without invocation of his constitutional rights against  
 28 self-incrimination. If a stay is not granted, Weinstein will be forced to invoke his

1 Fifth Amendment rights, thus rendering him unable to defend himself in the civil  
 2 matter. Under fundamental principles of due process, Weinstein is entitled to a stay  
 3 of this civil action pending resolution of the pending criminal charges. In the  
 4 absence of a stay, this action unfairly burdens Weinstein's constitutional rights to  
 5 defend himself against the criminal charges and will potentially interfere with a  
 6 criminal prosecution. Therefore, Weinstein's motion to stay should be granted.

### 7 Statement of Facts

8 On January 31, 2018, Plaintiff filed her First Amended Complaint ("FAC")  
 9 (Dkt. 1-5) seeking monetary damages from Weinstein, The Weinstein Company,  
 10 LLC ("TWC"), and Bob Weinstein. TWC and Robert Weinstein have subsequently  
 11 been dismissed as defendants. As to Weinstein, Plaintiff's FAC alleges causes of  
 12 action for unlawful sex trafficking in violation of 18 U.S.C. § 1591.

13 On May 25, 2018, Mr. Weinstein was arrested in New York and arraigned  
 14 by the NYDA on charges of criminal sexual act in the first degree, in violation of  
 15 New York Penal Law §130.50(1), rape in the first degree, in violation of Penal  
 16 Law §130.35(1), and rape in the third degree, in violation of Penal Law  
 17 §130.25(1). Brafman Dec., ¶ 4. A grand jury formally indicted Weinstein on those  
 18 charges on May 30, 2018, in the matter *The People of the State of New York v.*  
 19 *Harvey Weinstein*, Docket No. 2018NY023971. On June 5, 2018, Mr. Weinstein  
 20 pleaded not guilty. Four weeks later, on July 2, 2018, the NYDA filed a  
 21 superseding indictment charging Weinstein with the crimes of predatory sexual  
 22 assault (Penal Law §130.15(2)) (Counts One and Three), criminal sexual act in the  
 23 first degree (Penal Law §130.50(1) (Counts Two and Six), rape in the first degree  
 24 (Penal Law §130.35(1)) (Count Four), and rape in the third degree (Penal Law  
 25 §130.25(1)) (Count Five). Weinstein is also presently the target of a federal  
 26 criminal investigation out of the Southern District of New York, as well as the  
 27 target of active criminal investigations of felony sexual assault allegations in both  
 28

Los Angeles, California, and London, England. Brafman Dec., ¶ 5.<sup>1</sup> The NYDA has also provided formal notice to Weinstein that it will be seeking to admit claimed evidence of reported uncharged similar acts of sexual conduct at trial of the pending superseding indictment. Brafman Dec., ¶ 12.

### Argument

#### **I. A STAY IS WARRANTED IN LIGHT OF THE PENDING CRIMINAL ACTIONS AGAINST WEINSTEIN**

A stay should issue here because Weinstein is presently under criminal prosecution in the State of New York for the same type of conduct for which Plaintiff seeks civil liability in this action. Weinstein is presently facing criminal charges for rape and sexual misconduct.<sup>2</sup> In this action, Plaintiff alleges that Weinstein sexually assaulted her in 2010. Dkt. 1-5, ¶¶ 11-16. While Plaintiff is not a complaining witness in the criminal prosecution, this matter involves the same conduct for which Weinstein was indicted. As set forth in the Brafman Dec., Weinstein cannot defend himself against Plaintiff's sexual assault claim without also giving testimony and other information which may be used by the prosecution against him and which will likely prejudice his defense of the ongoing criminal prosecution. Brafman Dec., ¶¶ 10-11. As discussed below, a stay is warranted to preserve Weinstein's Fifth Amendment right against self-incrimination.

"The Fifth Amendment 'not only protects the individual against being involuntarily called as a witness against himself in a criminal prosecution but also privileges him not to answer official questions put to him in any other proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future criminal proceedings.'" *Baxter v. Palmigiano*, 425 U.S. 308, 316 (1976) (internal citations omitted). To avoid the conflict created by parallel civil and

<sup>1</sup> These investigations and the NYDA prosecution are collectively referred to as the "Criminal Actions."

<sup>2</sup> Weinstein adamantly denies all allegations and charges of nonsexual sex.



1 criminal proceedings, courts may stay civil proceedings “pending the completion  
 2 of parallel criminal prosecutions when the interests of justice seemed to require  
 3 such action [...]” *United States v. Kordel*, 397 U.S. 1, 12 n.27 (1970) (internal  
 4 citations omitted). “A stay can protect a civil defendant from facing the difficult  
 5 choice between being prejudiced in the civil litigation, if the defendant asserts his  
 6 or her Fifth Amendment privilege, or from being prejudiced in the criminal  
 7 litigation if he or she waives that privilege in the civil litigation.” *Louis Vuitton*  
 8 *Malletier S.A. v. LY USA, Inc.*, 676 F.3d 83, 97 (2d Cir. 2012) (citing *United States*  
 9 *v. 4003-4005 5th Ave.*, 55 F.3d 78, 83 (2d Cir. 1995)).

10 While the Constitution does not ordinarily require a stay of civil proceedings  
 11 pending the outcome of criminal proceedings, *see Federal Sav. & Loan Ins. Corp.*  
 12 *v. Molinaro*, 889 F.2d 899, 902 (9th Cir.1989), “[i]n the absence of substantial  
 13 prejudice to the rights of the parties involved, [simultaneous] parallel [civil and  
 14 criminal] proceedings are unobjectionable under our jurisprudence.” *SEC v.*  
 15 *Dresser Indus. Inc.*, 628 F.2d 1368, 1374 (D.C. Cir.), *cert. denied*, 449 U.S. 993  
 16 (1980). Thus, “a court may decide in its discretion to stay civil proceedings ...  
 17 'when the interests of justice seem[ ] to require such action.'" *Id.* at 1375 (quoting  
 18 *United States v. Kordel*, 397 U.S. 1, 12 n. 27 (1970)). *See also Keating v. Office of*  
 19 *Thrift Supervision*, 45 F.3d 322, 324 (9<sup>th</sup> Cir. 1995).

20 The decision whether to stay civil proceedings in the face of a parallel  
 21 criminal proceeding should be made "in light of the particular circumstances and  
 22 competing interests involved in the case." *Molinaro*, 889 F.2d at 902. This means  
 23 the court should consider "the extent to which the defendant's fifth amendment  
 24 rights are implicated." *Id.*; *see also Keating*, 45 F.3d at 324. Additional factors the  
 25 court should generally consider include: (1) the interest of the plaintiffs in  
 26 proceeding expeditiously with this litigation or any particular aspect of it, and the  
 27 potential prejudice of delay; (2) the burden which any particular aspect of the  
 28 proceedings may impose on defendants; (3) the convenience of the court in the



management of its cases, and the efficient use of judicial resources; (4) the interests of persons not parties to the civil litigation; and (5) the interest of the public in the pending civil and criminal litigation. *Keating*, 45 F.3d at 324. See also *Trs. of the Plumbers & Pipefitters Nat'l Pension Fund v. Transworld Mech.*, 886 F. Supp. 1134, 1139 (S.D.N.Y. 1995); *SEC v. Blaszcak*, 17-civ-3919, 2018 U.S. Dist. LEXIS 2289, \*4 (S.D.N.Y. Jan. 3, 2018); *In re Adelphia Communs. Secs. Litig.*, 2003 U.S. Dist. LEXIS 9736 at \*7 (E.D. Pa. May 14, 2003); *Javier H. v. Garcia-Botello*, 218 F.R.D. 72, 74 (W.D.N.Y. 2003); *Walsh Securities, Inc. v. Cristo Prop. Mgmt, Ltd.*, 7 F. Supp. 2d 523, 527 (D.N.J. 1998). Each of these factors favor the issuance of a stay.

A consideration of the relevant factors overwhelmingly weigh in favor of granting a stay in this case. There is substantial overlap in the issues presented by the civil and criminal cases. Weinstein is currently under indictment. The burden on Weinstein has the potential of being dramatically and unfairly negative if the stay is denied. The interests of the Court and the public both favor resolution of the criminal charges before the civil case is addressed because, among other reasons, it will allow the criminal prosecution to proceed unimpeded and unobstructed by any concerns that may arise in discovery in the civil case. In sum, here, as in *Maloney v. Gordon*, 328 F. Supp. 2d 508, 510 (D. Del. 2004), “[t]he public’s interest in the integrity of the criminal case is entitled to precedence over the civil litigant.” (Citing *Javier H.*, 218 F.R.D. at 75).

**II. THE FACT THAT WEINSTEIN IS UNDER INDICTMENT IS THE MOST SIGNIFICANT FACTOR WEIGHING IN FAVOR OF A STAY**

The Court should consider the fact that Weinstein is currently under indictment, which is the “strongest case for deferring civil proceedings until after completion of criminal proceedings.” *Jones v. Conte*, 2005 WL 1287017, \*1 (N.D. Cal. Apr. 19 2015) (J. Illston) (internal quotation omitted); see also *Continental*

1 *Ins. Co. v. Cota*, 2008 WL 4298372, \*2 (N.D. Cal. Sept. 19, 2008) (stating that the  
2 extent to which fifth amendment rights are implicated by a civil proceeding is the  
3 *first* consideration when evaluating a stay request) (emphasis added). “A stay of a  
4 civil case is most appropriate where a party to the civil case has already been  
5 indicted for the same conduct.” *Transworld*, 886 F. Supp. at 1139 (granting stay  
6 pending related criminal proceeding). *See also Louis Vuitton*, 676 F.3d at 101  
7 (“There is considerable authority for the principle that a stay is most justified  
8 where a movant [...] is already under indictment for a serious criminal offense and  
9 is required at the same time to defend a civil action involving the same subject  
10 matter”). Whether the defendant has been indicted is considered “‘the most  
11 important factor’ to be considered in the balance of factors [...]” *Maldonado v.*  
12 *City of New York*, No. 17-cv-6618 (AJN), 2018 U.S. Dist. LEXIS 93417, at \*4  
13 (S.D.N.Y. June 1, 2018) (internal citations omitted). *See also Hicks v. City of New*  
14 *York*, 268 F. Supp. 2d 238, 242 (E.D.N.Y. 2003) (“A court will generally stay a  
15 civil proceeding when a criminal investigation has ripened into an indictment  
16 against the proponent of a stay”).

17       Weinstein is currently under indictment for sexual assault and rape. Based  
18 upon that factor alone and the serious risks presented as a result, this Court should  
19 stay the civil proceeding. *See Molinaro*, 889 F.2d at 903 (“The case for staying  
20 civil proceedings is a ‘far weaker one’ when ‘[n]o indictment and been returned [,  
21 and] no Fifth Amendment privilege is threatened.’”) (quoting *SEC v. Dresser*, 628  
22 F.2d at 1376). *See also ESP Capital Partners LP v. Stratos*, 22 F. Supp. 3d 1042,  
23 1045 (N.D. Cal. 2014); *American Express Bus. Fin. Corp. v. RW Prof'l Leasing*  
24 *Servs. Corp.*, 225 F. Supp. 2d 263, 265 (E.D.N.Y. 2002) (granting stay and noting  
25 that a stay is especially appropriate where the movant is under criminal  
26 indictment).

1           **III. THE FACT THAT THERE IS SUBSTANTIAL OVERLAP**  
2           **BETWEEN THE CIVIL AND CRIMINAL CASES ALSO**  
3           **WARRANTS A STAY**

4           Courts look at the similarities between the civil and criminal cases because  
5 self-incrimination is more likely if there is a significant overlap. *Transworld*, 886  
6 F. Supp. at 1139. For example, in staying the civil proceeding in *Jones*, Judge  
7 Illston noted that civil discovery in the case would overlap with issues in the  
8 criminal matter, holding that “if discovery moves forward, the defendant will be  
9 faced with the difficult choice between asserting his right against self-  
10 incrimination, thereby inviting prejudice in the civil case, or waiving those rights,  
11 thereby courting liability in the [criminal] case.” 2005 WL 1287017, \*\*1, 2.  
12 Where, as here, the civil and criminal actions involve the same subject matter, *i.e.*,  
13 allegations of rape and sexual assault, a stay is likely to be granted. *See Crawford*  
14 *& Sons v. Besser*, 298 F. Supp. 2d 317, 319 (E.D.N.Y. 2004) (granting stay of all  
15 proceedings including service of answers pending resolution of parallel criminal  
16 action). Importantly, the civil and criminal actions do not need to be premised on  
17 identical facts to create a strong risk of self-incrimination. *See Louis Vuitton*, 676  
18 F.3d at 98. Testimony in a related civil action could constitute admissions of  
19 criminal conduct in a criminal prosecution because, “[e]ven where it would not be  
20 direct evidence of wrongdoing with respect to the scheme charged in the criminal  
21 case, such testimony may be admissible as *Fed. R. Evid.* 404(b) evidence in any  
22 criminal trial.” *Id.* (internal citations omitted). Here, the Criminal Actions and the  
23 civil case, while not involving the same parties, all stem from the same underlying  
24 alleged conduct: sexual assault. *See McCormick v. Rexroth*, 2010 WL 934242, \* 2  
25 (N.D. Cal. Mar. 15, 2010) (granting stay of civil proceedings pending resolution of  
26 related criminal case where “factual issues in the two cases are essentially the  
27 same”); *Cota*, 2008 WL 4298372, at \*2 (granting stay of civil action when “[i]t is

1 undisputed that all of the civil actions and the criminal action spring from the same  
2 nucleus of facts”).

3 The impossibility for Weinstein to respond to Plaintiff’s allegations or  
4 defend himself is exacerbated given the nature of the allegations in this action and  
5 the Criminal Actions. In the pending sex crime prosecutions in New York State  
6 Court, the prosecution often seeks to admit propensity or prior bad act evidence  
7 which is often barred in other types of prosecutions. Brafman Dec., ¶ 12. The  
8 NYDA has already provided notice that it will seek to introduce allegations of  
9 uncharged similar sexual conduct. *Id.* As such, Weinstein cannot give testimony or  
10 evidence concerning the allegations in the FAC regardless of whether Plaintiff is  
11 involved in the Criminal Actions, as it is clear the prosecution is going to seek to  
12 introduce Plaintiff’s allegations as evidence against Weinstein. *Id.* Moreover, the  
13 FAC includes allegations concerning Weinstein’s alleged course of conduct not  
14 limited to the purported hotel room incident concerning Plaintiff. *See, e.g.,* Dkt. 1-  
15 5, ¶¶ 18-21,

16 The California Superior Court’s decision in *Judy Huth v. William Henry*  
17 *Cosby, Jr.*, BC565560 (Cal. Sup. Ct. Mar. 30, 2016), is instructive. The defendant  
18 in that case was in a very similar situation as Weinstein, in that he was being sued  
19 civilly and criminally prosecuted for sexual assault. Zedalis Dec., Exhibit 1. In  
20 *Huth*, the court granted the defendant’s motion to stay pending a resolution of a  
21 related criminal proceeding over plaintiff’s objection that the facts and allegations  
22 in the civil case were distinct from those in the criminal matter. In so holding, the  
23 court reasoned as follows:

24 Ms. Huth contends the overlap is virtually nonexistent because Mr. Cosby  
25 has been charged with a crime in a different place, at a different time (1974  
26 in this case versus 2005 in Pennsylvania) and involving a different alleged  
27 victim. The Court disagrees. While there are distinctions between the cases,  
temporal and otherwise, the allegations both involve sexual assaults. The  
danger of undermining Mr. Cosby’s privilege of self-incrimination is clear.

28 *Id.* at 2 (emphasis added).

1 The United States District Court for the District of Massachusetts came to  
2 the same decision when dealing with a similar fact pattern in *Green v. Cosby*, 177  
3 F. Supp. 3d 673, 680 (D. Mass. 2016). In *Green*, the plaintiffs, who had publicly  
4 accused the defendant of sexual assault, brought a claim for defamation as a result  
5 of the defendant's public response to the allegations of sexual assault. The  
6 defendant filed a motion to stay the civil proceedings because he was, at the time,  
7 under indictment for sexual assault (of a woman unrelated to the *Green* action).  
8 The court granted the defendant's motion for a discovery stay holding that even  
9 though the "civil and criminal cases at issue [...] were not 'entirely parallel,'" due  
10 to the "the unique factual similarities between the allegations [in the civil case] and  
11 those contained in the criminal complaint, there [was] substantial risk that  
12 discovery provided by Defendant [in the civil case] could be used against him in a  
13 criminal trial." *Id.* Here, the facts are more compelling as, unlike in *Green*,  
14 Plaintiff's allegations involve the same type of conduct at issue in the Criminal  
15 Actions. It would be manifestly unjust to permit prosecutors in a criminal case to  
16 mine potentially incriminating evidence against a defendant from a parallel civil  
17 proceeding that they would otherwise not be entitled to in a criminal prosecution.  
18 *See Zedalis Dec.*, Exhibit 1, at 3. *See also Louis Vuitton*, 676 F.3d at 97, n. 11.

19 Here, the similarities of the allegations in the civil and criminal matters will  
20 undoubtedly place Weinstein in the "quandary of choosing between waiving [his]  
21 Fifth Amendment rights or effectively forfeiting the civil case." *Transworld*, 886  
22 F. Supp. at 1140. In addition to the prosecution by the NYDA, the investigations  
23 by the Southern District of New York and in Los Angeles and London are ongoing,  
24 thereby creating additional risk to Weinstein's liberty interests and constitutional  
25 privilege by this action continuing forward. *Brafman Dec.*, ¶ 5.

26 Moreover, Plaintiff's claims arise out of an alleged incident that occurred in  
27 2010. This fact refutes any argument by Plaintiff of her desire to litigate her sex  
28 trafficking claim in an expeditious manner.

1                   **IV. PREJUDICE TO WEINSTEIN OUTWEIGHS ANY**  
2                   **PREJUDICE TO PLAINTIFF**

3           While Plaintiff has a legitimate interest in the expeditious resolution of her  
4 case, the prejudice to Weinstein and burden on his constitutional rights outweigh  
5 Plaintiff's interests. *See Volmar Distribs. v. N.Y. Post Co.*, 152 F.R.D. 36, 40  
6 (S.D.N.Y. 1993) (granting stay and holding that while the stay will be an  
7 inconvenience and delay to plaintiffs, "under settled authority the Fifth  
8 Amendment is the more important consideration"). *See also United Techs. Corp. v.*  
9 *Dean*, 906 F. Supp. 27, 28 (D. Mass. 1995) (quoting *Corbin v. Federal Deposit*  
10 *Ins. Corp.*, 74 F.R.D. 147, 149-50 (E.D.N.Y. 1977) ("Nonetheless, while a stay  
11 may cause some inconvenience and delay to [Plaintiffs], 'protection of defendant's  
12 constitutional rights against self-incrimination is the more important  
13 consideration.'")). "Furthermore, because the civil and criminal issues are so  
14 closely intertwined, [Weinstein] may be put to the choice of invoking [his] Fifth  
15 Amendment rights sooner than he ought, if discovery in the civil case is allowed to  
16 proceed [against him] in any capacity, *see Javier H.*, 218 F.R.D. at 75 (citation  
17 omitted), and he also run[s] the risk of exposing [his] criminal defense strategies to  
18 the government, *see In re Adelpia*, 2003 U.S. Dist. LEXIS 9736 at \*14."  
19 *Maloney*, 328 F. Supp. 2d at 512. *Accord American Express*, 225 F. Supp. 2d at  
20 265 (stating that failure to grant a stay may expose defense theories to prosecution  
21 or otherwise prejudice the criminal case).

22                   **V. THE INTERESTS OF THE PUBLIC AND THE COURT ARE**  
23                   **BEST SERVED BY A STAY**

24           Granting the stay will not harm any public interest and will promote judicial  
25 efficiency. This case is brought for the benefit of the Plaintiff, not the public. The  
26 public interest is better served through the criminal proceeding as "the public  
27 interest in the criminal case is entitled to precedence over the civil litigant." *In re*  
28 *Ivan F. Boesky Sec. Litig.*, 128 F.R.D. 47, 49 (S.D.N.Y. 1989). *See also Crawford*



1 & Sons v. Besser, 298 F. Supp. 2d 317, 319 (“the public’s interest is also served by  
2 preserving the integrity of the criminal case”). Additionally, “to the extent any  
3 evidence produced by Defendant in discovery here could influence the criminal  
4 case, the court notes that ‘the public interest in unimpeded criminal law  
5 enforcement outweighs the civil interests here.’ *Green*, 177 F. Supp. 3d at 680  
6 (quoting *SEC v. Telexfree, Inc.*, 52 F. Supp. 3d 349, 353 (D. Mass. 2014)).

7 Moreover, the delay to the Court is minimal as this case is still in the early  
8 stages. Weinstein has brought this motion prior to filing an answer to the FAC,  
9 and there is currently no trial date set. Thus, staying the case may be better for  
10 judicial efficiency. *Maloney*, 328 F. Supp. 2d at 513. As the *Maloney* court  
11 explained:

12 If the civil action is stayed until the conclusion of the criminal proceedings,  
13 then it obviates the need to make rulings regarding potential discovery  
14 disputes involving issues that may affect the criminal case. . . . Furthermore,  
15 the outcome of the criminal proceedings may guide the parties in settlement  
16 discussions and potentially eliminate the need to litigate some or all of the  
17 issues in this case. *See id.* Thus, staying this case preserves judicial resources  
18 and may streamline other aspects of the civil case. As a result, this factor  
19 also weighs in favor of granting a stay.

20 *Id.*

### 21 Conclusion

22 WHEREFORE, for the reasons set forth herein, Defendant Harvey  
23 Weinstein respectfully requests this Court to grant his motion and enter an order  
24 staying this matter, pending resolution of the ongoing criminal case against  
25 Weinstein.

26 Dated: November 28, 2018

**KUPFERSTEIN MANUEL LLP**

By: /s/ Phyllis Kupferstein

Phyllis Kupferstein

Cynthia L. Zedalis

*Attorneys for Defendant Harvey Weinstein*